field, 27 Wis. 671. So where there was an unqualified acceptance, some statements about rents which were not parts of the contract, but a mere hope expressed, did not affect the binding character of the acceptance. *Bleecker* v. *Miller*, 40 Okla. 374, 138 Pac. 809. But see *Merriam* v. *Lapsley*, 12 Fed. 457.

Statements made in a letter containing the offer do not prohibit its acceptance being a binding contract, if they are not terms connected with the contract. *Moore* v. *Pierson*, 6 Iowa 279, 71 Am. Dec. 409. And so it is a just principle of construction, both morally and legally, that the promisor is bound according to the sense in which he apprehended that the promisee received his proposition. *Bruner* v. *Wheaton*, 46 Mo. 363.

COURTS—SPECIAL APPEARANCE—OBJECTIONS TO JURISDICTION NOT WAIVED BY SUBSEQUENT PLEA TO THE MERITS.—An action was brought against a corporation and service of process was made upon an agent of the corporation in the State, but the corporation was not doing business in the State. The corporation appeared specially by attorney and objection to the jurisdiction of the court over the person of the defendant. The objection was overruled and an extension of time was granted to the defendant in which to "demur, answer, or otherwise act." The defendant, still objecting to the jurisdiction, demurred to the complaint and later filed an answer. *Held*, the objections to the jurisdiction are not waived. *Pine Hill Coal Co.* v. *Gusicki* (C. C. A.), 261 Fed. 974.

An appearance is special when it is made for the sole purpose of objecting to the jurisdiction of the court over the person of the defendant because of want of process, defects in the process or service thereof, or some other jurisdictional defect. See *Walling* v. *Beers*, 120 Mass. 548; *Multnomah Lumber Co.* v. *Weston Basket Co.*, 54 Ore. 22, 99 Pac. 1046; *Norfolk, etc., R. Co.* v. *Consolidated Turnpike Co.*, 111 Va. 131, 68 S. E. 346, Ann. Cas. 1912A, 239.

The test for determining the character of the appearance is the relief asked. *Scott* v. *Mutual Reserve Fund Life Ass'n*, 137 N. C. 515, 50 S. E. 221. In this the law looks to substance rather than to form. See *Moore* v. *Blake*, 98 N. Y. Supp. 233. If the appearance is general in effect, the fact that the party styles it a special appearance will not change its character. *Crawford* v. *Foster*, 28 C. C. A. 576, 84 Fed. 939.

A defendant appearing specially to object to the jurisdiction of the court must keep out of court for all other purposes. He must limit his appearance to that particular question or he will be held to have appeared generally and to have waived the objection. *St. Louis, etc., R. Co.* v. *McBride*, 141 U. S. 127; *Reed* v. *Chilson*, 142 N. Y. 152, 36 N. E. 884. A party cannot be at once in court and out of court. He may not, in the same breath, dispute the merits of the cause alleged against him and deny jurisdiction of the court over his person. *Crawford* v. *Foster*, *supra*. The right to make a special appearance is a privilege allowed by practice, and it must be exercised under the rules of procedure. See *Mahr* v. *Union Pacific R. Co.*, 140 Fed. 921; *State* v. *Grimm*, 239 Mo. 135, 143 S. W. 483.

The court has power to grant an extension of time for appearance. See *Lowrie* v. *Castle*, 198 Mass. 82, 83 N. E. 1118; *Poultney* v. *City of La-Fayette*, 12 Pet. 472. And extending the time for answering extends the time for appearance. *Littauer* v. *Stern*, 177 N. Y. 233, 69 N. E. 538. But a special appearance for the purpose of moving to quash the service of process does not extend the time for a general appearance and answering to the merits. *Mantle* v. *Casey*, 31 Mont, 408, 78 Pac. 591.

In some jurisdictions it is held that where the defendant appears specially to object to the jurisdiction and the objection is overruled he must elect either to stand on his objection or to go into the merits, and by doing the latter he waives the former. *DeJarnette* v. *Dreyfus* 166 Ala. 138, 51 South. 932; *Corbett* v. *Physicians' Casualty Ass'n*, 135 Wis. 505, 115 N. W. 365, 16 L. R. A. (N. S.) 177. See also the dissenting opinion of Sanders, J. in *Fisher* v. *Crowley*, 57 W. Va. 312, 50 S. E. 422. An exception to this rule exists where the appearance is not voluntary. *Warren* v. *Crane*, 50 Mich. 300, 15 N. W. 465.

In many other jurisdictions, however, it is held, perhaps with sounder reason, that the defendant does not lose the benefit of his objection to the jurisdiction by afterwards, when the objection is overruled, pleading to the merits. *Harkness* v. *Hyde*, 98 U. S. 476. This doctrine applies when the defendant secures a ruling upon his objections to the jurisdiction and preserves his exceptions to that ruling. *Fisher* v. *Crowley, supra; Walling* v. *Beers, supra; Spratley* v. *Louisiana, etc., R. Co.*, 77 Ark. 412, 95 S. W. 776. This rule prevails generally in the Federal courts, following the principle laid down in *Harkness* v. *Hyde, supra*. But the first rule above stated seems applicable in Virginia. See *Shepherd* v. *Starbuck*, 118 Va. 682, 88 S. E. 59.

DAMAGES—GRATUITOUS SERVICES AS ELEMENT OF DAMAGES—NURSING.—The plaintiff was injured by the negligence of the defendant. As a result of this injury the plaintiff was confined to his bed for three months during which time he was nursed gratuitously by members of his family. The trial court instructed the jury that such gratuitous nursing was a proper element of damages. *Held*, the instruction is erroneous. *Baldwin* v. *Kansas City R. Co.* (Mo.), 218 S. W. 955.

Medical attendance and nursing rendered the plaintiff gratuitously by some person other than a member of his family have always been treated as proper elements of damages. *Klein* v. *Thompson*, 19 Ohio St. 569; *Varnham* v. *City of Council Bluffs*, 52 Iowa 698, 3 N. W. 792; *Pennsylvania Co., etc.*, v. *Marion*, 104 Ind. 239, 3 N. E. 874. Some courts however hold that if the person rendering these services is a member of the plaintiff's family and there is no express promise on the part of the plaintiff to pay therefor, the gratuitous nursing does not constitute an element of damages. *Gibney* v. *St. Louis Transit Co.*, 204 Mo. 704, 103 S. W. 43. See also *Peppercorn* v. *City of Black River Falls*, 89 Wis. 38, 61 N. W. 79. This view is based upon the ground that damages are compensatory in the absence of extenuating circumstances, and where the plaintiff has been put to no expense and incurred no liability he cannot recover. But expense incurred by the person in